

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D&L DISTRIBUTION, LLC and)
MELVIN R. WEAVER & SONS, LLC,)
Plaintiffs) Civil Action
vs.) No. 12-cv-00810
AGXPLOR INTERNATIONAL, LLC,)
Defendant)

O R D E R

NOW, this 26th day of March 2013, upon consideration of the following documents:

- (1) Defendant's Motion to Dismiss or, in the Alternative, Transfer and Consolidate, which motion was filed on March 27, 2012; together with
 - (A) Memorandum in Support of Defendant's Motion to Dismiss, or in the Alternative, Transfer and Consolidate; and
 - (B) Exhibit A through C;
- (2) Response of D&L Distribution, LLC and Melvin R. Weaver & Sons, LLC to Agxplore's Motion to Dismiss or Transfer and Consolidate, which response was filed on April 17, 2012; together with
 - (A) Memorandum in Opposition to Defendant's Motion to Dismiss or in the Alternative, Transfer and Consolidate; and
 - (B) Exhibit A;
- (3) Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss or in the Alternative, Transfer and Consolidate, which

supplemental memorandum was filed on September 21, 2012; together with

(A) Exhibits A and B;

(4) Defendant's Reply Memorandum in Support of its Motion to Dismiss or, in the Alternative, Transfer and Consolidate, which reply was filed on September 5, 2012; together with

(A) Exhibits A through J;

(6) First Amended Complaint for Declaratory Judgment, filed by D&L Distribution, LLC and Melvin R. Weaver & Sons, LLC on February 23, 2012;

and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that Defendant's Motion to Dismiss or, in the Alternative, Transfer and Consolidate is granted in part and denied in part.

IT IS FURTHER ORDERED that defendant's motion is granted to the extent that it seeks transfer of the within declaratory judgment action from the United States District Court for the Eastern District of Pennsylvania to the United States District Court for the Eastern District of Missouri, Southeast Division.

IT IS FURTHER ORDERED that the Clerk of Court shall transfer this action to the United States District Court for the Eastern District of Missouri, Southeast Division.

IT IS FURTHER ORDERED that defendant's motion to dismiss based upon an allegation of improper venue is dismissed as moot.

IT IS FURTHER ORDERED that defendant's motion to dismiss for lack of subject matter jurisdiction is denied because both this court and the United States District Court for the Eastern District of Missouri have concurrent subject matter jurisdiction over this matter.

IT IS FURTHER ORDERED that defendant's motion is denied in all other respects.¹

IT IS FURTHER ORDERED that the Clerk of Court shall close this case for statistical purposes.

BY THE COURT:

/s/ JAMES KNOLL GARDNER

James Knoll Gardner

United States District Judge

¹ I deny Agxplore's alternate motion seeking consolidation of this action with the action pending before the Missouri District Court, Civil Action No. 12-cv-00016. I leave the procedural question of how best to proceed with this declaratory judgment action post-transfer to the assigned Judge in the United States District Court for the Eastern District of Missouri, Southeastern Division.